

ORIGINAL

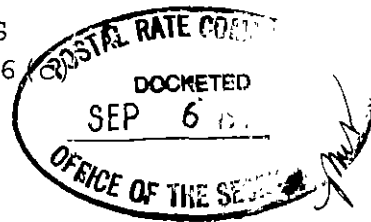
005205

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

RECEIVED  
SEP 6 3 17 PM '96  
POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

Special Services Fees and Classifications ) Docket No. MC96-3

OFFICE OF THE CONSUMER ADVOCATE  
MOTION TO COMPEL RESPONSES TO INTERROGATORIES  
OCA/USPS-48, 53(b) AND (c), 54(b) AND (e), AND 56  
(September 6, 1996)



The Office of the Consumer Advocate (OCA) requests that the Presiding Officer direct the Postal Service to respond to interrogatories OCA/USPS-48, 53 (parts b and c), 54 (parts b and e), and 56. These interrogatories seek information on the reliability of statistical cost estimating systems or corroboration of earlier Postal Service statements concerning those systems. The Postal Service objected to these interrogatories on September 3, 1996.<sup>1</sup>

Interrogatory OCA/USPS-48 requests production of cost development manuals for FYs 1994 and 1995 in electronic format. The Postal Service objects to providing the requested material on the grounds that the Commission's discovery rules do not permit

---

<sup>1</sup> Objection of the USPS to OCA Interrogatories OCA/USPS-48, 53(b) and (c), 56(c), and Partial Objection to OCA/USPS-54(b) and (e), September 3, 1996.

such requests. The Postal Service relies on sections 25 and 26 of the rules of practice and on section 2.E of the special rules of practice.<sup>2</sup>

The Service first asserts that interrogatory 48 is not reasonably calculated to lead to the discovery of admissible evidence, as required by section 25(a) of the rules of practice. This is a relevance objection. The OCA would have thought that the relevance of its request was obvious. The electronic versions of the two cost manuals can be compared using a computer, and changes from 1994 to 1995 identified, much faster and more reliably than using the human eye. Such a comparison would assist in verifying that the Postal Service has not overlooked any changes when preparing testimony or interrogatory responses.

The Postal Service also argues that interrogatory 48 is not permitted by section 26(a) of the rules of practice. That section provides that participants may "inspect and copy any designated documents or *things* which constitute or contain" relevant material. The Postal Service seems to be arguing that production of hard copy is equivalent to production of electronic versions of the cost manuals. However, as explained above, the

---

<sup>2</sup> Id. at 2-3.

electronic version is far more useful for identifying changes in costing methodology than is hard copy. The two are in no way equivalent.

Finally, the Service argues that interrogatory 48 is not permitted by section 2.E of the special rules of practice. That rule reads as follows.<sup>3</sup>

*E. Discovery to Obtain Information Available Only from the Postal Service.* Rules 25 through 27 allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding with no time limitations. Generally, through actions by the presiding officer, discovery against a participant is scheduled to end prior to the receipt into evidence of that participant's direct case. An exception to this procedure shall operate when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible up to 20 days prior to the filing date for final rebuttal testimony.

The Postal Service mischaracterizes this rule as pertaining "to interrogatories directed to the Postal Service to obtain information necessary to develop *intervenor testimony*."<sup>4</sup> The special rule does not limit requests to information needed to develop testimony. The only reference to testimony relates to setting the deadline for rule 2.E requests with respect to the

---

<sup>3</sup> Presiding Officer's Ruling No. MC96-3/3, Attachment B, July 25, 1996.

<sup>4</sup> September 3 Objection at 2 (emphasis added).

deadline for submitting final rebuttal testimony. And a Presiding Officer's Ruling in MC95-1 clearly establishes that rule 2.E requests may be submitted for purposes other than preparation of rebuttal testimony.<sup>5</sup> In any event, the only reason that the OCA would be unable to use the requested material for the preparation of testimony is the Postal Service's delay in producing it.<sup>6</sup> The Service's objection to interrogatory 48 is nothing more than a self-fulfilling prophecy.

Parts b and c of interrogatory OCA/USPS-53 request both IOCS estimates and actual costs by craft by sample office by quarter. The Postal Service objects on grounds of commercial sensitivity and (apparently) relevance.<sup>7</sup> The relevance of the request should again be obvious. The OCA wishes to compare IOCS estimates with actual costs as a means of evaluating the reliability of the IOCS. The OCA has no interest in facility-specific data as a means of evaluating the performance of individual offices. If the Postal Service can mask finance numbers in a way that allows comparison of IOCS estimates with actual costs (e.g., by using

---

<sup>5</sup> Presiding Officer's Ruling No. MC95-1/79, October 5, 1995, at 2.

<sup>6</sup> The OCA is perfectly willing to accept an electronic version "as is." That is, if there is no single integrated file that constitutes an electronic version of the cost manual, the OCA is willing to accept multiple files.

<sup>7</sup> September 3 Objection at 3-4.

dummy finance numbers), that is acceptable to the OCA. If the Postal Service wishes to provide ratios of estimated to actual cost by craft by office by quarter, that is acceptable to the OCA. But there would seem to be little doubt either of the relevance of the request or of the ability of the Postal Service to protect its commercial interests while responding in a useful way.

Parts c and e of interrogatory OCA/USPS-54 inquire into sampling frame inadequacies of the IOCS. Such inquiries are relevant for the purpose of evaluating the reliability of IOCS estimates. The relevance of sampling frame defects was recognized by the Commission in its MC96-2 opinion.<sup>8</sup> Contrary to the assertion of the Postal Service,<sup>9</sup> the OCA has not (intentionally) inquired about "thousands of postal facilities . . . ." This interrogatory deals solely with facilities that had no chance of being sampled by the IOCS. Ideally, the number of such facilities should be zero. If, instead, the magnitude of that number is in the "thousands," then the sampling frame for the IOCS is hopelessly flawed, and IOCS estimates are worthless. In either event, the requested information is highly relevant and should be provided.

---

<sup>8</sup> PRC Op. MC96-2 at 28-29.

<sup>9</sup> September 3 Objection at 5.

Part c of interrogatory OCA/USPS-56 (together with interrogatory OCA/USPS-70) seeks to determine whether the Postal Service took steps for FY 1996 to correct frame inadequacies that were clearly present in the FY 1995 IOCS. The OCA has not requested any FY 1996 cost estimates.<sup>10</sup> Rather, the OCA is seeking to determine whether the Postal Service itself recognized that frame inadequacies needed treatment and attempted to fix them in FY 1996. Such action by the Service would amount to an admission that the FY 1995 IOCS sampling frame was defective.

WHEREFORE the OCA requests the presiding officer to direct the Postal Service to respond to interrogatories OCA/USPS-48, 53(b) and (c), 54(b) and (e), and 56(c).

Respectfully submitted,



EMMETT RAND COSTICH  
Assistant Director

---

<sup>10</sup> See id. at 4.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with section 3.B(3) of the special rules of practice.

*Emmett Rand Costich*

EMMETT RAND COSTICH  
Attorney

Washington, D.C. 20268-0001  
September 6, 1996